The nonsense of copyright in libraries: digital information and the right to copy[1]

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Abstract:

The notion of copyright is deeply entrenched in the psyche of librarians, who remain one of the few groups who consistently support or uphold it.

Given the growth of digital information and consequential change in the behaviour of information creators and users the paper posits that copyright administration in libraries has become a cumbersome burden whose "time has come".

Changes in information provision by libraries towards delivering more digital information have ironically highlighted the paradox libraries face between providing the best possible service and upholding copyright. The notion that there exists in the digital environment a "right to copy" is put forward.

Copyright is legally complicated, controversial, subject to a number of misunderstandings and generally not fully understood even by the librarians whose daily tasks include administering it. To better understand the current status of copyright and its impact on libraries the notion of copyright is briefly outlined, along with what exactly copyright is, its historical roots and its suitability in the current environment.

In examining the legislation the paper critiques its aims and how it fails in these; compares arguments in favour and against its retention, investigates how it serves to restrict creativity rather than encourage it and in closing suggests why libraries should abandon the struggle to uphold copyright.

Examples from New Zealand, Australia, the US and the UK are used to highlight inconsistencies that support the argument that copyright in the digital environment is a nonsense that no longer works.

There is no nonsense so gross that society will not, at some time, make a doctrine of it and defend it with every weapon of communal stupidity.

Robertson Davies[2]

The copyright dilemma

The notion of copyright is deeply entrenched in the psyche of librarians, who remain one of the few groups who consistently support or uphold it.

Anybody who has ever watched student behaviour in an information commons or a customer at a photocopier will know that copyright is the last thing on their mind as they download or copy page after page after page of data. If you are a conscientious librarian you will also be faced with a dilemma; should I approach them, should I question or challenge them on their behaviour, should I be the ogre and remind them of the copyright regulations which we have gone to great trouble to display prominently, or should I just pretend I didn't see them, or just let them get on with their work? After all it's hard enough being a student without me policing their behaviour and they must need the data anyway.

A short history of copyright

Copyright historically is an extension of censorship and monopoly. Its background is related to the Catholic Church and, more importantly, intrinsically linked to universities.

Copyright stretches back to the exercising of censorship by the Catholic Church over written works, especially through the universities of the Middle Ages. Universities were also subject to the monopoly of the stationers who supplied them with manuscripts to be read in lectures. These stationers were licensed and often resided within the grounds of the university, the earliest mention being in 1272 in a judgement of the Bishop of Ely.

As the works of the reformers Erasmus and Martin Luther grew, this censorship became increasingly harsh. The Inquisition decreed in 1543 that no book might be printed or sold without permission from the Church and lists of banned books were drawn up. The first general *Index Librorum Prohibitorum* (*Index of Forbidden Books*) was issued in 1559. In England, an increasingly prominent part in this censorship came to be played by the Stationers' Company, who continually sought to protect its members and regulate competition. In 1557 the interests of the Crown, which wanted a ready instrument of control, coincided with those of the Company and it was granted a charter that gave it a virtual monopoly. Thereafter, only members of the Company or who otherwise had special privileges or patents might print matter for sale in the kingdom. Printers were sometimes given the sole right to print and sell a particular book or class of books for a specified number of years, to enable them to recoup their outlay.

After licensing, books were entered in the Company's register on payment of a small fee. The first to enter a book acquired the right to the title or "copy" of it. Thus the notion of copyright was born.

From the mid 18th century onwards, censorship in the West diminished, with, ironically, a considerable development in the growth of copyright The United States was first to legislate in 1790 and moves toward an international code began in 1828 in Denmark. This took the form of reciprocal treaty arrangements between individual countries by which foreign authors received the same protection as did native authors. In 1885 a uniform international system of copyright was initiated under the Berne Convention.

The essence of the Berne Convention was that all signatories agreed to copyright protection for the unpublished works of nationals of other member countries and for all works first published in the Convention countries.

The Statute of Anne, 1710

It is an oft repeated truism that there is nothing new in the library profession. For example, some believe that metadata schema represent an immense new step forward in bibliographic description, when rather the schema are, in one sense, simply a reinvention of the wheel.

So it is with copyright. The *Statute of Anne* in 1710 proscribed the notion of copyright in a statement whose meaning has changed little in 300 years. The modern understanding and application of copyright is based on this Statute, the full title of which is: *An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned*, and it begins:

Whereas Printers, Booksellers, and **other Persons**, have of late frequently taken the **Liberty** of Printing, Reprinting, and Publishing, or **causing to be Printed**, Reprinted, and Published Books, and other Writings, **without the Consent** of the Authors or Proprietors of such Books and Writings, to their **very great Detriment**, and too often to the Ruin of them and their Families: For **Preventing** therefore such Practices **for the future**, and for the Encouragement of Learned Men to **Compose and Write useful Books…**
[My emphasis] (Encyclopaedia Britannica Inc. 2006).

If we substitute the word “data” for “books”, the Statute could have been written yesterday (apart, perhaps, from the fine for breaching the Statute - one penny per sheet in 1710). In clinging to the outdated basic tenets laid down in the statute, the library profession continues to maintain an incomprehensible attitude towards (especially digital) data. It has once again failed to grasp the new nature of the digital environment.

What is copyright?

Copyright is the sole right to copy or produce a work, conceded to the publisher by the creator through a mutual agreement.

Copyright is the guarantee for a creator that s/he has legal rights to prevent the use of her/his material without fair compensation.

Copyright ensures that for a given period of time, the creator of a work has the opportunity to benefit financially from the work.

A fundamental goal of the legislation has always been that it should provide a balance between the creator reaping a reward and the creation being freely available for the public good. Ironically, digital material has distorted this goal to the extent that as material becomes more freely available, greater attempts at control are enforced. This conflict is evident on the one hand by parts of the music industry using digital rights management software (DRM) to prevent copying, whilst, for example, Universal Music announces its catalogue will be available as free downloads from 2007 (although not in New Zealand).

This change in the balance is at the heart of this thesis that the digital availability of data has fundamentally altered the relationship between creator, publisher and customer; and that the transfer of data, most notably via the Internet has rendered the guarantee of compensation meaningless.

Copyright in more detail

Some brief facts regarding copyright:

1. It is complex and confusing. A whole legal industry has grown around the notion. Legal journals and texts are printed in large numbers and the discipline now encompasses intellectual property and trademark law. As with all legal disciplines, opinion on the same issue is often at either end of the spectrum.
2. The New Zealand Act itself is lengthy at almost 200 pages (New Zealand Government 1994).
3. For a uniform notion, different rights exist in different countries. There are many similarities but no one single agreement on rights exists universally (including the Berne Convention). For example, Crown works in New Zealand are copyright protected (s. 26). In the US, federal government works are not protected but state or local government works may be protected (Crews 2006).
4. It promotes a monopoly arrangement and trading position.
5. The work must be original. Copyright cannot exist on a copy that has been plagiarised.
6. A distinction must be made between the works themselves and the copyright to the work. The two are separate entities but are intertwined. It is important to understand the notion that it is the “expression” that is protected and not the “idea”.
7. Ownership of an item does not confer any rights of copyright over the item.
8. It encompasses a bundle of rights including the right to copy, make adaptations, perform or broadcast the work and have sole ownership (although true to the illogical nature of copyright, this is not as straightforward as it may appear).

Who wants copyright?

The book industry and creators

Without doubt those desperate to retain copyright, and lobbying hardest, are involved in the book trade. Publishers depend on the monopoly to recoup costs and creators on the income generated during the period of copyright. Publishers will control distribution in the country of origin, sell rights to overseas publication, translation and film rights. An enormous amount of money is generated before a copy is even sold. It was predicted in

August 2006 (Matthews 2006) that Lloyd Jones' new novel *Mister Pip* would be the first New Zealand novel to reach $NZ1 million in rights sales. This is not income generated by copyright, this is income generated by the on-selling purely of the rights to the novel.

As far as creators are concerned it has not always been the case that remuneration is ongoing. Consider the following discussion of Shakespearean era playwrights:

The authors claim ceases with the transfer of the manuscript. For example a play script after it left the playwrights hands was no more the authors' property "than the cloak that he might have sold to the actors at the same time". Once purchased, a script, like a cloak might be shortened or lengthened or refurbished entirely according to the needs of the company and without consulting the author (Rose 1993).

Authors as creators have always claimed copyright is an essential element of their work and have been a party to its elevation to such a status that to question it is tantamount to heresy. That it affords protection from copying, and an income stream, may have been relevant in the past but are not as justified in today's digital environment.

Augmentations of copyright are schemes to reward creators when their works are borrowed from a library. The reasoning being that it compensates the creator for the loss of a sale. However, one of the purposes of a library is to provide material to borrow, that the customer has never had the intention of purchasing, thus generating income for the creator who has not actually lost a sale. In fact the opposite is true. Provision of material in a library may stimulate purchasing by library customers who have identified material of interest that they may otherwise not have been aware of.

In February 2004, the (UK) Public Lending Right scheme compensated 18,783 recipients. 67% (12,584) received less than £100 and 1.5% (282) received the maximum compensation of £6,000.

In the financial year 2004/5 the Authors' Licensing & Collecting Society Ltd. distributed a total of £12.32 million to 32,608 recipients, representing an average of £377 each (Great Britain. Secretary of State for Culture 2004).

The New Zealand Authors' Fund operates in a similar vein. Established in 1973 and administered by Creative New Zealand it has strict criteria for qualification (including annual registration, minimum extent of the work, minimum number of libraries holding the work etc.). Its government vote and compensation are much smaller than in the UK and form part of Creative New Zealand's overall budget.

Such trifling compensation is hardly worth the effort to monitor, collect and distribute. It is rather unlikely that the meagre average payout is going to stimulate creativity or sufficiently compensate a creator for lost sales. The irony is that of the 282 recipients of the maximum payout of PLR, none of them actually need it. They are in the league of Barbara Cartland, J.K. Rowling and Jeffrey Archer.

The film industry

Equally desperate and much more vociferous in their campaign to retain copyright are the film and music industries. These two industries generate the loudest clamour for maintaining and enforcing copyright, outwardly because they claim to have the greatest

financial burden. But how much of this is out of genuine financial need to recoup costs, and how much is altruism and how much is hypocrisy?

The film industry represents an interesting dichotomy in the copyright argument. On the one hand it outwardly claims it as a vital protection in the struggle against piracy. On the other hand consider the following notion: 1. A film is designed to generate as much income as possible, 2. It relies on exposure to generate income and the best type of exposure is advertising, 3. The greater the exposure, the greater the advertising, the greater the opportunity to market spin-offs.

For every person visiting a cinema to see the latest Disney film another is eating a themed burger meal, or reading a themed book, or sipping from a themed water bottle. It is spin-offs that generate a vast amount of income. The emphasis that the film industry places on copyright and piracy is mostly lip service. It has to be seen to be doing something, even if what it does is completely ineffectual. The furore generated by the availability of the pirated version of *Sione's Wedding* being available before its general release early in 2006 is a case in point. Whilst these bodies clamoured for a prosecution, a running joke was soon circulating that most of South Auckland had already seen or owned a copy of the film. What was never established was how many people went to see the film as a result of the publicity, or, from a desire to see the film on a large screen with professional sound etc, after viewing the pirated DVD.

The music industry

The music industry similarly uses copyright to outwardly protect its market position.

In 2002 the International Federation of Phonographic Industries (IFPI) produced its *Piracy Report,* with regional and country statistics on piracy. The report (cited in Takeyama 2005) shows that legal CD sales have fallen considerably and the estimated value of worldwide pirate sales had a value of $US4.2 billion in 2000. The decline in legal sales was attributed to the growth of pirate sales.

In August 2006, The British Phonographic Industry released the results of a survey which "suggested" that CD piracy cost the industry £165m in lost revenue in 2005 due to the sale of some 37 million pirated CDs. The value of these pirated CDs was more than the combined legal sales of the leading 13 albums in the UK.

There is more to this argument than simply attributing the decline in legal sales to piracy. Firstly, pirate prices are lower than legal prices so more purchases are made at pirate prices than would be the case for those sold legally. Secondly, the availability of pirate copies may actually stimulate demand for legal copies as purchasers seek higher quality recordings or "genuine" CD inserts. Thirdly, declining legal sales could be due to the lack of appeal of ephemeral performers or those with limited talent. Fourthly, economic conditions may be dictating an unwillingness to pay in the region of $40 for a CD. Fifthly, the recent introduction of digital rights management software (DRM) has meant that the CD cannot be copied. Those who purchase a CD in order to copy it are thus not purchasing as many.

During the period covered by the IFPI report there was the technological shift as LPs and cassettes were replaced with CDs. This artificially increased sales of recordings in the 1990s and their decline is part of a normal product cycle. In the US, sales of LPs per

capita climbed every year from 1973-1999. From 1999-2003, sales fell back to the level they had been in 1986 (Takeyama 2005).

We should bear in mind that the cost of law suits brought by these companies is huge and the budget for bringing law suits is seemingly endless. Copyright cases are complex and can be long running and these firms are well known for their desire to increase legislation in their favour. In the end these costs must be recovered through income from sales, yet the emphasis on decreasing sales only serves to highlight a limited approach to the issue.

Copyright licensing and associated bodies

Copyright licensing bodies have a vested interest in maintaining copyright. It is very rare for a body to vote itself out of existence. The (US) Copyright Clearance Center reported revenue of over $US137 million in 2005 and employs some 180 people. Clearly the administration of copyright is a huge industry (Copyright Clearance Center 2005).

The New Zealand Federation Against Copyright Theft (NZFACT) currently employs 12 private investigators undertaking enquiries into copyright breaches. In a 2006 paper prepared for the American Chamber of Commerce in New Zealand, NZFACT Director of Operations, Tony Eaton claims that piracy cost the industry $6.1 billion in revenue in 2005 but fails to produce evidence of this claim. In a typical attempt by those who have most to loose by the loosening of legislation, Eaton goes on to claim that there will be no more films such as *Sione's Wedding* or *The River Queen* in New Zealand unless copyright is enforced. In a third unsubstantiated statement, Eaton makes his wildest and most unusual claim that the gangs are now involved in piracy selling drugs and pirated DVDs as a "package deal" (Eaton 2006).

The legal industry

The administration, regulation and interpretation of copyright and its legal basis has spawned a huge branch of the legal industry and thus represents an enormous source of income and opportunity for lawyers. The legal industry continues to service the clamour for more legislation from large industries (particularly in the US) that will limit public access to data.

Whilst the entities above, with shareholders and a remit to generate a profit maintain their powerful lobby, the notion of the Internet acting for the public good as provider of freedom of information, knowledge and educational development for all cannot be fulfilled.

Libraries and universities

Libraries and universities find themselves in an interesting position. Ironically they find it hard to accept the loss of copyright because they are founded on print culture. They are faced with having to open up to a challenge, having to change and having to accept the new. Our profession is not renowned for its willingness to grasp change and the new. Yet as far as the profession is concerned we really have nothing to gain from it. We do not receive royalties or a fee; we are not remunerated for administering the provisions of the legislation or the cost of notices, time, stress and worry about what we are asked to do by customers. A recent example from my own experience is of a music portfolio submitted in

fulfilment of a degree which necessitated an inordinate amount of time and correspondence between the student, the faculty, departmental secretaries and library staff. Even though library staff are generally following their organisations' regulations, they often suffer from the stress, and retain a sense of concern, that they are not held personally liable should someone decide to sue for breach of copyright.

Copyright places a huge financial burden on academic institutions in New Zealand. In 2004, total revenue for copyright licenses paid to Copyright Licensing was $4.8 million ($4 million domestic revenue), up 14% from 2003. 50% of the domestic licensing revenue was paid by universities, amounting to some $2 million. Even the Chief Executive Officer of Copyright Licensing was forced to admit that "licensing in the educational sector has almost reached saturation level" (Sheat 2005).

Who doesn't want copyright?

Whilst those in favour of copyright are vociferous in their demands, those opposed to copyright are seldom heard.

The opening example of students illustrates how little concerned this group of people are about what they may or may not copy. It could be claimed that this same group of people are also those who are downloading the largest amount of copyrighted data from the Internet and thus it is a generational problem, but how many of us recorded an LP onto a blank cassette? The issue is the same, only the technology has changed and such is the technology involved in electronic data transfer that we sometimes fail to fathom that those downloading data are only doing what we did in the past.

As New Zealand continues its march towards what is commonly described as a "nanny state", it would seem there is a correlation between the more the authorities tell us what to do, the more the notion of personal responsibility declines.

It is interesting to note that not all creators were or are in favour of copyright. Samuel Butler noted in the preface to the 2nd edition of *Erewhon* that:

I would gladly cut out some forty or fifty pages [from the 1st edition] if I could. This, however, may not be, for the copyright will probably expire in a little over twelve years. It was necessary, therefore … to make substantial additions … at any rate for the copyright (Butler 1970)[3].

To cite a more recent example, a lengthy memoir has recently been published "*free of copyright*" (During 2006).

In addition to students and creators the following could be said to be in favour of abandoning copyright:

1. Those paying the vast amounts of licensing fees.
2. Universities and other academic institutions who must administer copyright.
3. Those unable to make use of a copyrighted work.
4. Those that blatantly or through ignorance ignore copyright (a conservative 99% of the population?).

5. Faculty members who happily turn their papers over to domains such as institutional repositories or pre-print archives would seem to have little concern for giving up their rights.
6. Those attempting to trace copyright holders to gain permission, or determine if copyright still applies to a work (known as *orphan works*).
7. Those that see copyright as unworkable in relation to digital data.

What's wrong with copyright?

Copyright at one time was simple and indivisible. There was only a limited number of formats and relatively limited amount of material. Today the number of formats and amount of material has mushroomed beyond a controllable level. Because of this, the claims that copyright makes for creativity, ownership and income generation noted earlier do not stand up to scrutiny.

Copyright is not a stimulus to creativity. Those with a desire to create a work will do so because the expression of their ideas is what is important to them. The desire for a creator to be published is the primary driving force in that person creating a work. Today, everybody wants to be a creator as evidenced by the vast growth of vanity publishing, autobiographies of ordinary people, blogs, and such websites as *YouTube* where everybody is a creator. The irony is that copyright actually hampers the widest possible dissemination of such works. In July 2006, *YouTube* (the 18th most popular website) was sued for copyright infringement on the basis it allowed copyright images to be uploaded. However, it had a defence that (the earlier case against) *Napster* did not have in that by displaying a notice that it would remove material if copyright owners objected. This reinforces the illogical nature of copyright, simply by displaying this notice copyright holders are prevented from suing.

With very few exceptions a creator's primary motivation is not to make money. Indeed in New Zealand this is almost impossible, as it is for the creators of academic texts where print runs are small.

Copyright does not protect originality. All creations are based to some extent on what came before and no creation is completely original. Ideas come from reading or viewing or listening to other creations and imagination is stirred in the same way.

During the 2004/2005 dispute between Wairiki College and Copyright Licensing, Ranginui Walker was quoted as saying that authors have a right to be remunerated for the use of their intellectual property (Copyright Licensing 2005). Why? Why are authors different? If something is made available in the public arena does it not become public property? Following Walker's analogy, if I view an artwork in a gallery, does the artist have a right to be remunerated for my use of the artwork? What makes some creators different from others?

How long does the reaping of the reward go on for? Should it be a single reward? Should it be royalties on sales? Should it be copyright for ever including after death? We are now seeing a common practice amongst graphic artists demanding contracts that give them proceeds of a sale every time a work of theirs is sold. Is this greed, or the art world equivalent of copyright protection of the printed word?

Copyright is not the huge reward for the creator's labour that it is claimed to be. We saw earlier that those who gain the most financially are the industry giants and the legal profession. As with the Lloyd Jones example, the majority of a creator's income comes from the sale of the idea, or the artwork, or the screenplay, not from any kind of payment in lieu of creative ability. There is an oft quoted example of English authors of the nineteenth century who published in the US without copyright protection, and who were financially better of for doing so.

Why copyright fails in the digital environment

The digital environment in which libraries operate has radically altered the world copyright seeks to regulate. Essentially, copyright material has become much more vulnerable to unauthorised copying (which obviously is not good for those holding the copyright) and new technologies have overcome the restrictions upon the dissemination of material that existed in the analogue environment (which obviously is good for consumers).

Copyright in the digital environment fails, most notably because:

1. The notion that copyright provides a guaranteed income for the creator of a work has been shown in at least one experiment to be false. Thompson (2005) cites the case of MIT Press who in 1994 published on its website the book *City of Bits* and allowed free downloads. Prior to this they had estimated the number of print sales would be between 6,000 and 8,000 copies. In fact 10,000 copies were sold and the book is still in print. Making a work free and copyright free and posting on a website generated more print sales than had the work solely been available in a print, copyright version.

2. It is ironic that the technology that allows digital data to be transmitted is the same technology that is used to control access to information such as articles in a database.

3. Copying something digital is almost without cost. Although there are associated costs such as having a PC; access to the web; purchasing CD or DVDs, these are not viewed by consumers in the same way as purchasing a pre-recorded CD.

4. Access to an almost unlimited amount of information is much easier than if the information were in print format, thus the temptation to make unauthorised use of it is much greater.

5. Technologically speaking the copying of digital material is almost impossible to prevent. In a recent move *Yahoo* has acknowledged this and released the first music download without copy protection. The download does not have any digital rights management (DRM) restrictions and thus once downloaded, can be burnt repeatedly. Although those downloading the file will pay a premium price of $US1.99 compared to $US0.99 the availability of the file without DRM will outweigh the price. This is in direct contravention of moves amongst other US companies who are clamouring for more DRM. This reflects the societal change that downloading music has become a social practice rather than an economic practice. *Yahoo* Director of Product Management, Ian Rogers is reported as saying that the only people who benefit from DRM are the technology companies (BBC 2006a).

6. Copyright fails because of distributed ownership and rights. The position is often too complicated to fathom out when determining copyright status especially in relation to music where there may be lyrics, music, creator, performer, recorder, etc.

7. It is naïve of copyright holders to believe that the general public will adhere to the letter of the law when software designed specifically to copy digital files is readily available (for example, *MyDVD*®, now in version 8 and readily available for only $US70); when PCs come ready assembled with DVD burners and websites encourage visitors to purchase and download files. This leads to perhaps the primary reason why copyright fails in the digital environment – there is no sense of wrongdoing in those who violate the law. A classic thesis on illegal behaviour (Tyler 2006) states that people obey the law if they believe it is legitimate and not because they fear punishment. The media industry, which on the one hand promotes technology allowing copying, and on the other, clamours for more copyright does not promote a sense of legitimacy. Fear of punishment for infringing copyright is particularly non-existent amongst students and young people, especially in the absence of prosecutions of individuals.

A number of reasons contradict common sense with regard to the failure of copyright:

1. Copying broadens access. The more a work is copied, the more it is seen. All creators inherently want their work to have the widest audience, yet copyright acts to restrict the widening of the audience, contrary to the notion of free and wide access to information.

2. Once the term of copyright has expired, a work falls into the public domain. The public will have free access eventually, so why create such a fuss when it is only a matter of time before access and use is uninhibited?

3. In the UK, music performers receive royalties from sales and airplay for 50 years after a song is released. The composer however, is entitled to royalties for the period of their life and a further 70 years (BBC 2006b). Where is the logic here?

4. The notion of "fair use" allows copying, yet the general public does not understand the distinction between infringement and fair use.

5. The first and biggest cause célèbre of the digital age was *Napster*. *Napster* didn't actually infringe copyright but knowingly enabled others to do so – thus it was guilty of "secondary infringement". The law aims to control not only those infringing copyright but also those enabling infringement while not actually infringing themselves.

   The argument against *Napster* was essentially whether or not it would increase or decrease the number of CDs sold. Both prosecution and defence undertook surveys of US college students but the results were inconclusive and did not take account of other trends in music retailing. This reinforces the other data regarding music sales we reviewed earlier.

6. All legislation is simply playing "catch up" with new technology yet nobody has questioned whether the effort and expense of drafting new legislation in respect of rapidly changing technology is actually economic.

Copyright failure and libraries

Whilst the points above are relevant to the activities of libraries, there are other more relevant reasons including:

1. With so much information no longer "held" in the library building, but being accessed remotely, it is impossible to monitor or control from a copyright perspective. A consequence of this is that the law is practically unenforceable.

2. Customers with some understanding of copyright may regard it as being overly protective of publishers or business (i.e. the copyright owner) and choose to ignore it as a form of conscious or unconscious protest.

3. Legislation can conflict with the goals or plans of the library to increase access to digital media. A recent example of this from the US comes from a statement by Saul Schniderman, a Library of Congress union president, to the US Congress that Google's mission, in association with the Library of Congress, to create the *World Digital Library* by making accessible all the world's information runs into copyright issues, and so does the *World Digital Library*. According to Schniderman (2006) "[the Library of Congress] cannot digitize the vast bulk of its holdings while the US copyright law remains in effect".

4. As more and more customers ignore copyright, libraries put greater effort into upholding it, as if they had something to gain from it. Libraries have no direct gain and are simply pandering to the monopolistic practices of data owners. This hampers the role of libraries as information providers and thus they become more and more irrelevant in the eyes of customers.

5. Customers ignore it because the desire to obtain the data they require is greater than the possible penalties. When was the last case of a library customer being prosecuted for breach of copyright?

6. Libraries clamour to provide huge aggregates of information in the form of databases, which present information in a manner that appears to obviate the need for and existence of copyright protection. Customers access and use these databases without librarian intervention but at the same time librarians burden themselves with acting as guardians of copyright legislation.

7. The New Zealand Act (New Zealand Government 1994, ss. 44-57) allows librarians to copy reasonable proportions of works for individuals (and for other libraries) for the purpose of study. To a student this must seem illogical, especially where the copying only makes up a portion of what the student has requested.

8. Some libraries will and do circumvent the legislation. For example, the extreme high cost of some DVDs purchased for educational establishments (sometimes hundreds of US dollars) is due in part to a licence fee as a result of copyright. Libraries may circumvent this by purchasing from Amazon, or purchasing by faculty

who then “lend” the item to the library. It is rather hypocritical for a library department to be acting as upholder of copyright, when another is circumventing the legislation when it suits them. Another widespread practice is to make back-up copies of expensive video’s or DVDs, without permission, so that if the original becomes damaged or worn out, the copy can be added to stock. Interestingly, libraries do not copy expensive monographs.

Conclusion

Copyright legislation is complicated and in many cases either contradictory, illogical and/or completely confusing. In the midst of a new era of information creation and distribution the legislation fails to keep pace with developments. The public and young people in particular, regard copyright as an illogical impediment to their social or work behaviour. The existence of punitive penalties and the lack of prosecutions of library customers contribute to the notion held by customers that copyright can be violated without fear of prosecution. Library staff are generally completely unaware of the breaching of legislation, or hesitate to challenge customers they suspect of breaching legislation.

The digital environment has created new formats of data and the ability to transmit that data instantaneously and with ease. The rational for copyright based on an analogue work and to ensure an economic reward for the creator’s labour to stimulate further works is no longer valid. In the digital environment, creating a work and placing it in the public domain where access and control over the work is practically unenforceable results in the failure of copyright and the right to copy.

Endnotes

[1] The views expressed in this paper are those of the creator and do not necessarily reflect the views of the University of Waikato.
[2] Retrieved from http://www.memorable-quotes.com/robertson+davies,a1821.html, 10 August 2006.
[3] Butler was writing of the 1842 Act which granted copyright for seven years after the creator's death.

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